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Transformations of Citizenship in Montenegro: a context-generated evolution of citizenship policies

Jelena Džankić

Working Paper 2010/03



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University of Edinburgh, School of Law
The Europeanisation of Citizenship in the Successor States of the Former Yugoslavia
(CITSEE)

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citizenship policies**

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This paper has been produced in close collaboration with the European Union Democracy Observatory on Citizenship (EUDO-Citizenship) and has been made available as a EUDO country report on www.eudo-citizenship.eu. The paper followed the EUDO structure for country reports presenting historical background, current citizenship regimes and recent debates on citizenship matters in the country under scrutiny. Other materials that complement this paper such as citizenship-related legislation, citizenship news, chronology, adopted international conventions and bibliography are also available on the EUDO website.

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Transformations of Citizenship in Montenegro: a context-generated evolution of citizenship policies¹

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Abstract

This paper argues that in Montenegro, unlike in the other successor states of the former Yugoslavia, citizenship was not a mechanism of ethnic homogenization. Rather, it was a tool of political manoeuvring that changed in content alongside the changes of the political environment. The paper includes a historical background of citizenship policies, an analysis of the current citizenship regime, and an overview of the current debates. This second version of the paper also includes an analysis of the most recent changes to Montenegro's citizenship regime, including 'citizenship-by-investment'.

Keywords:

citizenship, Montenegro, Yugoslavia, politics

Introduction

Citizenship policies in Montenegro are similar to the ones of the other successor states of the former Yugoslavia in that they were highly influenced by the political circumstances in which they were adopted. For this reason, it is essential to understand the historical background of the present citizenship regime. Montenegro was the only successor state of the former Yugoslavia to remain in the common state with Serbia, thus establishing the Federal Republic of Yugoslavia (FRY) in April 1992. The first Yugoslav Citizenship Act of the FRY was enacted in mid-1996, four years after the creation of the common state. Adopted after the conclusion of the Dayton-Paris Agreement that brought peace to Bosnia and Herzegovina, the Yugoslav Citizenship Act was largely a politically engineered piece of legislation. It had a 'zero-option' for citizenship, and was applied retroactively to the date when the FRY Constitution had been enacted. As such, it reflected Slobodan Milošević's

¹ An earlier version of this paper has been published on the CITSEE and EUDO websites. This version of the paper contains a series of updates, resulting from the change in the Montenegrin citizenship legislation.

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expansionist policies towards the rest of the former Yugoslav federation.³ During this period, the constituent republics of the FRY applied the republican Citizenship Acts from the mid-1970s as the second tier of citizenship policies.

Yet only six months after the adoption of the Yugoslav Citizenship Act, the relationship between Slobodan Milošević and a part of Montenegrin ruling elites became tense. Consequently the ruling Montenegrin political party – Democratic Party of Socialists (DPS) – split in two: with the DPS opposing Milošević's policies and the Socialist People's Party (SNP) supporting them. In the decade following the split, and in particular after the fall of Milošević in 2000, the political contest between these two factions manifested itself as the quest for Montenegrin statehood and nationhood.⁴ As a part of this process, the ruling DPS adopted a series of laws aimed at detaching Montenegro from the FRY. Subsequently, the 1999 Montenegrin Citizenship Act was conceptualised in a way that defined republican citizenship and that collided with the 1996 Yugoslav Citizenship Act.

The question of Montenegrin citizenship also came into play at the time of the transformation of the FRY into the State Union of Serbia and Montenegro in 2002. The constitutional setup of the new state provided that citizens of one member state would also have all the civic and political rights in the other member state apart from voting rights. Given the small size of Montenegro, the issue of voting arithmetic had particular significance.

Because of the political struggles that marked the decade preceding the Montenegrin referendum on independence of 21 May 2006, the first Montenegrin Citizenship Act, which is another point of analysis, took slightly less than two years to materialise. Compared to other Citizenship Acts from Montenegrin history, the 2008 Citizenship Act explicitly defines citizenship as the relationship between individuals and the state. This fact is particularly relevant, given the conundrum over nationhood in Montenegro, and the government's rhetoric of the 'civic' nature of the Montenegrin state.

³ By 1996, the direct expansionist policies of Milošević towards Bosnia and Herzegovina and Croatia had largely failed. However, people who declared themselves ethnically Serb and who were registered in Bosnia and Herzegovina and Croatia in 1992 were not entitled to the citizenship of the FRY. Consequently, this gave Milošević a push to re-conceptualise his expansionist goals, and present himself as a guardian of the interests of the Serb people in the other former Yugoslav republics. A further aspect of this new expansionism of Milošević was mirrored through the status of Serb refugees, who became de facto stateless and as such hostages to Serb politics. The fact that a significant number of Serb refugees settled in Vojvodina, Kosovo and Montenegro (which were all minor in terms of population to Serbia), thus changing ethnic balances therein, helped the reflection of this policy within the FRY. At the same time, the 1992 FRY Citizenship Law established clear primacy over republican citizenship, thus reaffirming the federal grip over Montenegro.

⁴ The nationhood issue revolved around the question whether Montenegrins were Serbs or a separate nation. The political camp led by the ruling DPS grew into the pro-independence (pro-Montenegrin) bloc, while the opposition clustered around the unionist (pro-Serb) bloc. The political strength of the two blocs was rather balanced, with the pro-independence camp exceeding the 55 per cent threshold for independence by a margin of 0.5 per cent of votes.

Moreover, the 2008 Citizenship Act is based on three principles: 1) legal continuity of citizenship; 2) prevention of statelessness; and 3) reduction of dual citizenship. The final principle implies rather restrictive approaches to naturalisation and dual citizenship. This is a major aspect of the public debate surrounding the citizenship policies, which deserves special attention in this analysis. The 2008 Montenegrin Citizenship Act has been amended in July 2010, and the new provisions of the Law are also analysed in this paper.

1 The history of citizenship policies in Montenegro

In order to gain a thorough understanding of the current citizenship regime in Montenegro, as well as the circumstances surrounding the adoption of the 2008 Citizenship Act, it is essential to present a historical survey of the legal and political conditions that shaped the citizenship policies in Montenegro at various historical moments. To that end, it is particularly relevant to outline the historical dimension of the various policies directly or indirectly related to citizenship including the Yugoslav system of federal and republican citizenship, the legacies of this system after the Yugoslav disintegration, and the usage of citizenship policies in the recent Montenegrin quest for independence.

1.1 Pre-Yugoslav citizenship policies in Montenegro

The peculiar geographical position of Montenegro, and the country's unique history, affected the citizenship regime prior to the establishment of the 'first' Yugoslavia in 1918. It is worth mentioning that in this period there were no separate citizenship laws. By the same token, provisions regulating the relationship between the individuals and their belonging to the state were rather scarce and vague. The likely reason for this situation is the general absence of legal acts, largely caused by the modes of social organisation and conflicts that existed on the territory of the present-day Montenegro.

In fact, until the late eighteenth century, societal and political organisation in Montenegro was based on the notion of the tribe, which was a 'military, political and moral collective' (Jovanović 1995: 65). In addition, the territory of Montenegro was divided into '*Crna Gora*' ('Montenegro'/'Old Montenegro') and '*Brda*' ('Highlands'), each consisting of a number of tribes. Consequently, the construction of a modern administrative and legislative framework in Montenegro was a lengthy process, often hampered by inter-tribal differences.

In fact, before Petar I Petrović (1782-1830) assumed power, tribal divisions often prevented the implementation of any form of central authority. In 1803 Petar I Petrović promulgated the *General Montenegrin and Hill Code*, which is considered to be the first written law in Montenegro. Although no explicit mention of the term citizenship was made in this legal act, two of its provisions are particularly relevant for understanding the meaning of citizenship in nineteenth century Montenegro. The

terms *Crnogorac* and *Brdjanin* denoted the legal relationship of the people inhabiting the two regions of Montenegro with the state (art. 18). The term *Primorac* was used to denote people who lived in the coastal areas of present-day Montenegro, that belonged to the 'imperial land and state' (Austria-Hungary). People referred to as *Crnogorac* and *Brdjanin* were considered to be 'the sons of the fatherland' and were bound to 'be faithful and devoted to their fatherland and that no wealth can separate him from it, or bribe him so that he becomes a betrayer of his brothers and the fatherland' (art. 33).⁵ The provisions thus stipulated were based on the principle of *ius sanguinis*, and although defined by territorial principles, they were in fact related to descent.

A similarly vague and poorly defined relationship between the people and the state was enshrined in the *General Legal Code* (1855), which reiterated the provisions of the previous law. However, this legal act introduced an important addition – the rights of aliens in Montenegro. It stipulated that any 'member of a foreign tribe or faith can freely live [in Montenegro] and have the right to the same freedom and justice as any Montenegrin and Highlander' (art. 92).⁶

However, the overall legal framework in Montenegro was rather underdeveloped in the late nineteenth century. Following the expansion of the territory of Montenegro under Nikola I Petrović, the first *Statute of Montenegro* (1905) was adopted, which contained some reference to citizenship policies. The actual acquisition of citizenship was not promulgated in the *Statute of Montenegro*, although the term 'Montenegrin citizens' was persistently used instead of 'Montenegrins' and 'Highlanders'. Notwithstanding, according to the *Statute* any citizen could renounce their Montenegrin citizenship, following the completion of military service and other duties towards the state (art. 215). This article represented an important departure from the previous legislation, which contained no such an entitlement for 'Montenegrins' and 'Highlanders'.

In addition, the *Statute of Montenegro* provided continuity of rights for aliens, and clearly stipulated that foreigners were subject to Montenegrin laws regarding taxation; while the laws would 'protect their person and property' (art. 216). In addition, foreigners convicted on political grounds were granted the right to asylum (art. 217). These provisions marked an important advancement in the pre-Yugoslav legal framework in Montenegro, which – compared to the Western democratic countries was rather underdeveloped.

1.2 Citizenship policies until 1991

The establishment of the Kingdom of Serbs, Croats and Slovenes in 1918 (renamed the Kingdom of Yugoslavia in 1929) marked a new era in the development of the citizenship policies in Montenegro in the subsequent seven decades. At the time of

⁵ Author's translation.

⁶ Author's translation.

the establishment of the common Yugoslav state, the post First World War settlement and international treaties determined the citizenship issues among the countries in the region (Kos 1994). The centralised Yugoslav Kingdom enacted a Citizenship Act a decade after its creation. This act established single Yugoslav citizenship based on the principle of *ius sanguinis a patre* (Kos 1994; Medved 2009).

Following the collapse of the Kingdom during the Second World War, the common state was restored in 1945 under the name of the Democratic Federal Yugoslavia (renamed the Federal People's Republic of Yugoslavia on 29 November 1945). The Citizenship Act, based on the principles of continuity and *ius sanguinis*, was enacted in DF Yugoslavia on 23 August 1945, and enforced in FPR Yugoslavia as of 5 July 1946. Pursuant to this Act, people who were entitled to Yugoslav citizenship included: 1) the people who had Yugoslav citizenship under the 1928 Citizenship Act; 2) people permanently residing in territories adjoined to Yugoslavia following the termination of the Second World War (art. 3);⁷ 3) people having the ethnicity (*narodnost*) of one of the FPR Yugoslav republics and who were born or raised therein, provided that they had no foreign citizenship (art. 25). In addition, the provisions of this Act, and its subsidiary legislation,⁸ were largely a legacy of the communist victory and the Second World War. Consequently, the conditions for naturalisation for those people who cooperated in the national-liberation struggle were facilitated. At the same time, the law deprived the citizens who were believed to have been disloyal to the interests of the FPR Yugoslavia,⁹ and stipulated that citizenship could be taken away on grounds of absence (art. 15), which specifically targeted political, mostly right-wing emigration..

The 1945 Citizenship Act had two further important implications. First, the citizenship of FPR Yugoslavia was exclusive to foreign nationals, i.e. it did not provide the acquisition of dual citizenship. Second, it established the category of republican citizenship (art. 1, arts. 28-34) as the second tier of citizenship in Yugoslavia. This means that each citizen of the FPR Yugoslavia was simultaneously a citizen of only one of its constituent republics (arts. 28-34).

The latter provisions sparked the adoption of Citizenship Acts in the constituent republics of FPR Yugoslavia. An interesting fact about these acts is that they stipulated identical conditions for the acquisition of citizenship. Montenegro

⁷ A separate law was adopted on 27 November 1947 which regulated the citizenship of people residing in the territories acquired by FPR Yugoslavia following the conclusion of the peace treaty with Italy. Pursuant to this law, people residing as of 10 June 1940, in territories acquired by Yugoslavia from Italy would acquire Yugoslav citizenship, and thus lose their Italian one. A one-year period to decide upon whether they wished to live in Italy or in Yugoslavia was granted to Italians living in Yugoslavia and people residing in the disputed border area.

⁸ Law on the Deprivation of Citizenship for Officers and Non-Commissioned Officers of the Former Yugoslav Army Who Do Not Want to Return to the Homeland, and for the Members of Military Forces Who Have Served the Enemy and Have Defected Abroad (invalidated in 1962). *Official Gazette*, No. 64/1945; No. 86/1946. Amendment and Addendum of the Law on Citizenship. *Official Gazette*, No. 105/1948.

⁹ Amendment and Addendum on the Law on Citizenship. *Official Gazette*, No. 105/1948.

adopted its first separate Citizenship Act in 1950, which was framed within the 1945 Citizenship Act of the FPR Yugoslavia. There were similar provisions in the Citizenship Act of 1965, which mirrored the federal citizenship provisions from 1964, and made no significant departure from the 1950 Citizenship Act. In line with these acts, Montenegrin citizenship was acquired along with the federal citizenship, and under the same conditions. That is, Montenegrin citizenship could be acquired by origin, birth, naturalisation or under international treaties.

The 1950 Citizenship Act also provided that citizens of other republics could acquire Montenegrin citizenship, provided that they renounced the citizenship of the other republic. In this case, their citizenship of another republic would be terminated on the day of the person's admission into Montenegrin citizenship. Yet, the primary rule for the acquisition of citizenship under the 1950 Citizenship Act was *ius sanguinis*, on grounds of which a child would be granted the citizenship of their parents, regardless of the child's place of birth. In cases where the parents were citizens of two different republics, one of whom was from Montenegro, the child would acquire Montenegrin citizenship should his or her parents agree to this. Should no such an agreement be reached by the child's parents, the child would be given the citizenship of one of their parents *ex lege*, having in mind the child's residence.

The republics' citizenship acts had particular relevance in the development of the political processes in FPR Yugoslavia, and were closely related to people's voting rights, as only republic-level registers of citizens existed until 1991. According to the Voters' Register Act of 10 August 1946, voting rights were granted in line with individuals' republican citizenship, regardless of residence. For instance, if a person had Montenegrin citizenship acquired through *ius sanguinis*, but resided in Macedonia, he or she would have the voting rights in Montenegro.

During the existence of the socialist Yugoslavia, two further Citizenship Acts were adopted – in 1964 and in 1976. The first novelty introduced by the 1964 Citizenship Act was the abolition of provisions related to the loss of citizenship on grounds of absence, and the ones referring to the enemies of the state (discussed above). As such, the 1964 Citizenship act substantially facilitated naturalisation of foreign citizens, which is largely due to the international treaties that Yugoslavia had signed in the period from 1945 to 1964 (Medved 2009). To that end, a person could be deprived of Yugoslav citizenship if they abrogated from the general postulates of the Universal Declaration of Human Rights and the UN Charter (art. 19, para. 3). The second novelty introduced by the 1964 Citizenship Act was the inextricability of the federal and the republican citizenship, whereby the loss of the former automatically led to the loss of the latter. In this respect, the federal citizenship had primacy over the republican one.

The 1976 Yugoslav Citizenship Act streamlined the previous legislation and aligned it with the federal principles enshrined in the 1974 Constitution of the Socialist Federal Republic of Yugoslavia. Similar to its predecessors, this legal act was based on the principle of continuity of citizenship under the 1964 Act. It did,

however, provide two further titles aimed at resolving issues that arose as: 1) a result of collision of republican citizenship norms (Title IV); and 2) a consequence of the previous non-regulation (in the Citizenship Act) of the Citizenship Register (Title V). The former provision regulated the acquisition of citizenship for children whose parents were citizens of different republics (art. 22). In such a case, three options were possible: 1) if the child were born on the territory of the republic of which one of the parents had citizenship, the child would acquire the citizenship of that republic; 2) if the child were born on the territory of the republic of which none of the parents had citizenship, the child would *ex lege* become the citizen of the republic whereby he or she were born, unless the parents decided that the child should have the citizenship of one of the republics that they had the citizenship of; 3) if the child were born abroad, the parents would make an agreement as to which citizenship the child would acquire.¹⁰ In the case of the Citizenship Register, the legislation provided that the Registers were kept by the authorities of the republics, but that the Citizenship Certificate was of SFR Yugoslavia, in which the republican citizenship was also noted (arts. 23-25).

The Citizenship Act of the Socialist Republic of Montenegro was enacted on 27 May 1975, eighteen months prior to the adoption of the Citizenship Act of SFR Yugoslavia. This fact made Montenegro the first among the Yugoslav federal republics to have adopted new citizenship legislation. This law became particularly relevant in the context of citizenship legislation in Montenegro, since it remained in force until the adoption of the 1999 Citizenship Act.

The 1975 Citizenship Act defined the relationship between the Montenegrin and the federal citizenship, whereby the latter had precedence. It established the category of Montenegrin citizenship (arts. 1 and 2), and stipulated that the citizens of other republics of the SFR Yugoslavia had the same rights and duties on the territory of Montenegro as Montenegrin citizens (art. 3).

Article 4 of the 1975 Citizenship Act of SR Montenegro established that the citizenship of Montenegro could be acquired through: 1) origin; 2) birth; 3) admission (of citizens of other republics); 4) admission of foreigners into SFRY citizenship; or 5) international agreements. The criteria related to the acquisition of Montenegrin citizenship by birth and origin were in line with the ones stipulated in the federal Citizenship Act of 1964 that was in force at the time. Fashioned after the federal legislation, Montenegrin Citizenship Act contained provisions aimed at resolving disputes related to citizenship stemming from the collision with the norms of other republics. In such cases, the citizenship of the child whose one parent had Montenegrin citizenship would be determined by parents' agreement (art. 5); or – should no such an agreement be reached – by residence, or by the fact that the parent the child is living with a citizen of SR Montenegro (art. 6).

¹⁰ If such an agreement were not made, the child would acquire the citizenship of the republic in which one of its parents registered him or her.

In terms of naturalisation, two categories were instituted by the 1975 Citizenship Act and related to citizens of other SFR Yugoslav republics or to foreign nationals. The admission of foreign nationals into Montenegrin citizenship was dependent upon the admission of foreigners into the federal citizenship (art. 11). By contrast, the admission of citizens of other SFR Yugoslav republics to Montenegrin citizenship was done upon request, provided that the person had residence in Montenegro (art. 8), while children under the age of eighteen, whose both parents were admitted into Montenegrin citizenship would also obtain thus citizenship by default (art. 8).

Finally, the 1975 Citizenship Act also regulated the loss of Montenegrin citizenship, which would occur should a person: 1) obtain the citizenship of another Yugoslav republic; 2) request the release from Montenegrin citizenship; 3) renounce their Montenegrin citizenship; or 4) be withdrawn their Montenegrin citizenship (arts. 13-17). The latter three categories were regulated by federal legislation. Interestingly, no provision of the 1975 Citizenship Act required the citizen of another republic to renounce their citizenship in order to obtain the Montenegrin one, although citizens of SFR Yugoslavia could have only one republican citizenship. Instead, the 1975 Citizenship Act stipulated that by acquiring the citizenship of another republic, a person would lose their Montenegrin citizenship (arts. 13 and 14). The outcome of such a provision, and the complex (and often sloppy) administrative procedures was most apparent at the time of the disintegration of the former Yugoslavia, when the citizenship of a number of people depended on the citizenship registers resulting in a number of problems related to the acquisition of citizenship (Štiks 2006).

1.3 Citizenship policies from 1991 to 2008

The early 1990s brought the disintegration of Yugoslavia and the bloodiest conflict that Europe had seen since the Second World War. Unlike the other federal republics of the SFR Yugoslavia, Montenegro decided to remain in the common state with Serbia.¹¹ The two former Yugoslav republics established the Federal Republic of Yugoslavia (FRY) on 27 April 1992. Montenegro stayed in the common state with Serbia (restructured into the State Union of Serbia and Montenegro on 14 March 2002) until 21 May 2006, when the population of Montenegro voted for independence. However, the history of common life of the two republics of the former Yugoslavia in the past two decades was far from smooth. From 1997 onwards, on section of the Montenegrin leadership detached itself from Slobodan Milošević and embarked upon a process of ‘creeping independence’, i.e. the gradual

¹¹ At the referendum held on 1 March 1992, 95.4 per cent of the 66 per cent turnout expressed their preference for Montenegro to remain in a common state with other former Yugoslav republics wishing to do so. Independence oriented Liberal Alliance of Montenegro and minorities boycotted the 1992 referendum in Montenegro.

establishment of institutions in Montenegro that would function independently from the ones of the FRY (Morrison 2009; Roberts 2007). After 2000, this tendency grew into the quest for independent statehood on the behalf of the Montenegrin ruling elites, and the resistance thereto by Montenegrin opposition parties. As a consequence of the progressive separation from Belgrade, Montenegrin government utilised a series of laws and policies as means of detaching from the federal institutions. One of them was the citizenship policy.

The initial FRY citizenship policy was set out in the Constitution of 27 April 1992. The Constitution established Yugoslav citizenship, and republican citizenship as its second tier (art. 17). In line with the constitutional provisions, Yugoslav citizens could not be deprived of their citizenship or extradited to another country, while Yugoslav citizens residing abroad enjoyed the protection of the FRY (art. 17, para. 3). Unlike the constitutions of the former Yugoslavia, the FRY constitution allowed dual citizenship, provided that those who also possessed the citizenship of another state were treated as 'Yugoslavs' when on the territory of the FRY. Almost simultaneously, the Constitution of the Republic of Montenegro, enacted on 12 October 1992 established the category of Montenegrin citizenship. Montenegrin citizenship was inalienable, and Montenegrin citizens could not be deprived from the right to change it (art. 10). Such provisions were clearly generated by the wartime circumstances on the territory of the former Yugoslavia in the first half of the 1990s.

The FRY Constitution also provided that a separate federal law would regulate the citizenship policies. However, the Yugoslav Citizenship Act was not adopted until 1996, since the policymakers in the FRY sought to circumvent clear legal definitions of citizenship policies. This avoidance, in turn allowed them a greater margin of manoeuvre when it comes to ethnicity and citizenship, which were particularly malleable at the time of ethnic conflicts. The 1996 FRY Citizenship Act was clearly a product of the turbulent times in the former Yugoslavia. The most peculiar fact related to this Act was that it stipulated that only the people in possession of republican citizenship of Serbia and of Montenegro on the day of the adoption of the FRY Constitution would be entitled to federal citizenship, along with the people from other former Yugoslav republics permanently settled in the FRY, provided that they did not have another citizenship. However, in contrast to the practices in the other former Yugoslav republics, which adopted their citizenship policies shortly after the disintegration, the Citizenship Act of the FRY came into force over four years after the establishment of the state. As such, it was applied retrospectively for an extensive period of time, during which a number of Serb refugees¹² from Bosnia and Croatia had settled in the FRY. Given the fact that the conditions for acquiring the citizenship of the FRY were quite restrictive, and that a lot of discretionary power was granted to the Ministry of Interior in determining

¹² The current Montenegrin legislation terms these people as 'displaced persons'. In the context of the Montenegrin legislation, that term will be used. Here, the term refugee is more appropriate, and corresponds to the terminology used in the academic literature.

residence due to the poorly administered Citizenship Registers, this policy, by manipulating a huge number of refugees, was used in order to vindicate Milošević's expansionist aims (Štiks 2006).

Yet by the time the 1996 Citizenship Act entered into force, political circumstances in the FRY had changed significantly, with the Montenegrin ruling elites departing from Milošević's politics. That said, the Law on Montenegrin Citizenship, enacted on 1 November 1999 is a clear example of how legislative measures were used to detach competences from the federal level as part of a process of creeping independence and of how citizenship policies were pivotal for the arithmetic of voting. In effect, the Law on Montenegrin Citizenship of 1999 was in conflict with the Yugoslav Citizenship Act of 1996, since the republican citizenship could be acquired without the prior or simultaneous acquisition of the federal one. In addition, the 1999 Law on Montenegrin Citizenship stipulated that Montenegrin citizenship could be obtained by birth, origin, naturalisation, or international agreements (art. 2). A ten year residence criterion was applied in the case of foreigners living in Montenegro. This residence requirement was reduced to five years in cases of spouses of Montenegrin nationals (art. 9). The stringent criteria for naturalisation were caused by the division that occurred on the Montenegrin political scene between the supporters of Milošević (after 2000 the pro-union camp) and the opponents of the regime in Belgrade (after 2000 the pro-independence camp). In effect, the margins by which the opponents of the Milošević regime won the elections in Montenegro have been rather small since the 1997 split in the ruling party (Democratic Party of Socialists – DPS) which generated this division. Consequently, the criteria for naturalisation in the 1999 Law on Montenegrin Citizenship were stringent because the ruling coalition sought to prevent a large number of people who fled from Croatia and Bosnia and Herzegovina from obtaining voting rights. The displaced persons and subsequently internally displaced persons (IDPs)¹³ who settled on the Montenegrin soil at the time of conflicts in the former Yugoslavia were predominantly of Serb ethnicity, and thus more likely to vote for the political faction that supported Milošević and – after his ouster – the common state with Serbia.

With the transformation of the common state of Serbia and Montenegro, and the adoption of the Constitutional Charter of the State Union on 4 February 2003, the link between the voting rights and citizenship became somewhat clearer. That is, citizens of Serbia and of Montenegro had equal rights and duties in the other state, apart from electoral rights (art. 7). This fact was extremely significant at the time of

¹³ The term 'displaced person' denotes people who have fled from Croatia and Bosnia and Herzegovina. The term 'internally displaced persons' denotes individuals who have fled from Kosovo during 1998 and 1999. At the time when they first arrived to Montenegro, Montenegro was still part of the FRY, making these people 'internally displaced persons'. After Montenegro became an independent state, the Parliament of Montenegro adopted the Decision on the Temporary Retention of the Status of Displaced Persons and Internally Displaced Persons. That is, the terms 'displaced person' and 'internally displaced person' are still used in Montenegro.

the 2006 referendum on independence in Montenegro, and in the pre-referendum debate.¹⁴

After Montenegro became independent, the Constitution of Montenegro enacted on 19 October 2007 established a separate Montenegrin citizenship (art. 12). The citizenship policy was more clearly defined in the Law on the Implementation of the Constitution of Montenegro. Enacted on the same day as the Constitution, the Law on Implementation arranged the issue of dual citizenship following Montenegro's independence. Citizens who had citizenship of Montenegro and another country before 3 June 2006 were allowed to retain both citizenships. Citizens who acquired the citizenship of another country after 3 June 2006 are allowed to retain the citizenship of Montenegro until the bilateral agreement of that country is signed, and - at most - for a year after the entry into force of the Constitution of Montenegro (art. 12). Due to the division in Montenegro,¹⁵ the Constitution and the Law on Implementation were met with resistance from the pro-Serb parties.

The tensions between the pro-Serb and the pro-Montenegrin parties in the post-referendum environment led to the delay in the adoption of the Montenegrin Citizenship Act until 14 February 2008. The pro-Serb opposition claimed that the draft Citizenship Act and the adopted text were both restrictive and discriminatory as it did not allow dual citizenship. The pro-Montenegrin government claimed that a restrictive law was a 'better solution' (*Pobjeda*, 15 February 2008). This stance was probably generated because the population of Montenegro was small and because dual citizenship from among the successor states of the former Yugoslavia (most likely Serbia) would have had a high impact on the voting population of the country and their electoral choices.¹⁶ Consequently, the provisions of the 2008 Montenegrin Citizenship Act still remain hot issues in political debates.

¹⁴ At the time of the pre-referendum debate, then President of Serbia – Vojislav Koštunica – requested that over 264,802 Montenegrins residing in Serbia received voting rights in Montenegro. Because the voting population of Montenegro stood at 457,633 such a major addition of voters would have significantly affected the results of the plebiscite (voters from Serbia were likely to vote for the preservation of the common state). However, the request of Vojislav Koštunica was a political one and there were no legal grounds for it to be applied in Montenegro. The Montenegrin Law on the Election of Representatives and Deputies links voting rights (the same provisions applied to the Referendum Law of 2005) to both Montenegrin citizenship and residence. Only the people who resided in Montenegro for twenty four months before the elections could take part therein (art.11).

¹⁵ The parties that previously advocated the preservation of the common state considered Montenegrins and Serbs to be the same nation. The parties that previously advocated Montenegrin independence considered Montenegrins a separate nation. Thus, in popular discourse the former were termed pro-Serb and the latter pro-Montenegrin.

¹⁶ Serbian List (the major opposition coalition in 2008) produced a list of 100,000 people living in Serbia and seeking dual citizenship with Montenegro.

2 The current citizenship regime

The 2008 Montenegrin Citizenship Act establishes the category of Montenegrin citizenship as the legal relationship between an individual and the state of Montenegro (art. 1). Article 1 of the Citizenship Act clearly states that the term 'citizenship' does not imply 'national and ethnical origin', along the lines of the 2007 Constitution which defined Montenegro as a 'civic' state in light of the debate over statehood and identity in Montenegro.

The most recent Montenegrin Citizenship Act regulates three types of issues: 1) acquisition and loss of citizenship; 2) procedures of acquisition and loss of citizenship; and 3) the Citizenship Register. It is divided into seven sections: 1) basic provisions; 2) acquisition of Montenegrin citizenship; 3) loss of Montenegrin citizenship; 4) re-acquisition of Montenegrin citizenship; 5) procedures for the acquisition and loss of Montenegrin citizenship; 6) Citizenship Register; and 7) transitory arrangements.

The 2008 Montenegrin Citizenship Act has been amended on 09 July 2010, through the adoption of the Law on Amendments and Addenda to the Montenegrin Citizenship Act. Hence, the subsequent sections will explain in detail the modes of acquisition and loss of Montenegrin citizenship, present the debate over dual citizenship and its implications, and give an overview of the institutional arrangements for the acquisition and loss of Montenegrin citizenship.

2.1 Modes of acquisition of Montenegrin citizenship

Title II of the 2008 Citizenship Act stipulates the different criteria for the acquisition of Montenegrin citizenship. In line with art. 4 of the Constitution, similar to the previous Citizenship Acts, Montenegrin citizenship can be acquired by: 1) origin; 2) birth on the territory of Montenegro; 3) naturalisation; and 4) international agreements and treaties.

2.1.1 Origin

Pursuant to arts. 5 and 6 of the Citizenship Act, the dominant principle of acquisition of Montenegrin citizenship is the one of *ius sanguinis*, that is - the principle of origin. This principle is applied when 1) the child's father and mother had Montenegrin citizenship at the time of the child's birth; 2) one of the parents had Montenegrin citizenship at the time of the child's birth, provided that the child was born on the territory of Montenegro; 3) one of the parents was Montenegrin citizen at the time of the child's birth, while the other was stateless or of unknown citizenship (or if the parent was unknown) and the child was born abroad; or 4) one of the parents was a Montenegrin citizen at the time of the child's birth and the child was born in a foreign country, or if the child is stateless.

The provisions for the acquisition of Montenegrin citizenship by children born to at least one Montenegrin parent, in Montenegro or abroad, were streamlined in the art. 6 of the Citizenship Act. Pursuant to this article, the child is entitled to Montenegrin citizenship, when 1) the child was born abroad, and one of the parents was a Montenegrin citizen at the time of the child's birth, if that child is enlisted in the Birth Register and the Citizenship Register by the age of eighteen, provided that the child does not hold the citizenship of another state; 2) the person is over eighteen years of age, if one of the parents is a Montenegrin citizen, and the other is a citizen of a foreign country, if that person makes a request for enlistment in the Citizenship Register prior to reaching twenty-three years of age; or 3) the child was adopted, if one of adoptive parents is a Montenegrin citizen. In the Law on Amendments and Addenda to the Montenegrin Citizenship Act, article 6 has been supplemented by the addition of the line 'provided that he or she [the child] does not have the citizenship of the other parent' to all three paragraphs of the provision.

In either of the aforementioned cases, enlistments and the process for the acquisition of Montenegrin citizenship is done by the child's parents until the age of fourteen. For children over the age of fourteen, the consent of that child is also required prior to his or her acquisition of Montenegrin citizenship.

2.1.2 Birth on the territory of Montenegro

The second principle governing the acquisition of Montenegrin citizenship is *ius soli*; that is – by birth on the territory of Montenegro. Similar to the legislative frameworks in many other countries, this provision in the Citizenship Act was aimed at preventing statelessness. Consequently, according to article 7 of the Montenegrin Citizenship Act, a child is entitled to Montenegrin citizenship in case he or she were born or found on Montenegrin soil, if the child's parents were stateless, or of unknown citizenship. However, where it is determined by the time the child reaches the age of eighteen that both of his or her parents are foreign citizens, or if the child acquires citizenship of another country, the child will lose his or her Montenegrin citizenship. If the child is older than fourteen years of age, he or she must consent to the loss of Montenegrin citizenship.

2.1.3 Naturalisation

The conditions for naturalisation in Montenegro are strict. Such an approach to citizenship in Montenegro has largely been affected by the two decades of political instability; a high number of people who sought refuge on Montenegrin territory throughout the 1990s; and the tendency of the policymakers not to disrupt the current balance of voters. Art. 8 of the Citizenship Act provides that a person may acquire Montenegrin citizenship through naturalisation, in line with the interests of the Montenegrin state. The conditions that the petitioner needs to fulfil in order for his or her request to result in Montenegrin citizenship include: 1) that the person has

reached eighteen years of age; 2) that he or she has been released from citizenship of another country; 3) that he or she has legally and continuously resided in Montenegro for a period of ten years prior to the application for citizenship; 4) that he or she has a permanent financial guarantee in Montenegro; 5) that they had not been sentenced abroad for more than 1 year, or are not being prosecuted *in absentio*; 6) that he or she has an active command of basic Montenegrin language skills; 7) that the person is not a security threat to Montenegro; and 8) that she or she has no pending tax obligations. In light of these criteria, children born to naturalised parents acquire Montenegrin citizenship by default, while adopted children need to continuously reside in Montenegro in order to attain citizenship (art. 16).

The strict residence criterion of ten years is not applied to spouses of Montenegrin citizens, who will be naturalised if they were married to a Montenegrin citizen for at least three years and have legally and uninterruptedly resided in Montenegro for at least five years and if they fulfil all other conditions stipulated in article 8 (art. 11). The 2010 Law on Amendments and Addenda to the Montenegrin Citizenship Act has streamlined article 11, by an additional line, which specifies that the condition for naturalisation of spouses (three years of marriage, and five years of lawful and uninterrupted stay) is to be fulfilled 'prior to the submission of the application for admission to Montenegrin citizenship'. A completely new provision has also been enshrined in Article 11, and it specifies that the same conditions for naturalisation apply where a person had been married to a Montenegrin citizen for at least three years, and the marriage was terminated by the death of the spouse.

The residence criterion is also reduced (to two years) in the case of Montenegrin expatriates and their descendants up to the third generation who fulfil other conditions for naturalisation (art. 10). In July 2010, article 10 has been supplemented by a new provision, which points to Article 17 of the Citizenship Act. In context, the provision stipulates that the criteria for the 'lawful and uninterrupted stay in Montenegro of at least two years' are determined by the Government of Montenegro. The same provision, i.e. reference to Article 17, applies to Article 26 – readmission into Montenegrin citizenship, for which one year of 'lawful and uninterrupted stay in Montenegro' is required.

The conditions for naturalisation for the citizens of the successor states of the former Yugoslavia stipulated in article 41 prescribe that such people must not have citizenship of their state of origin, or that they may have renounced such citizenship. Thus, the persons registered as displaced persons and IDPs in Montenegro, are eligible for Montenegrin citizenship if they had registered 'residence' (*prebivalište*) in Montenegro on 03 June 2006. They need to fulfil the criteria from article 8, apart from residency (but only if they have registered 'residence' (*prebivalište*) in Montenegro on 03 June 2006)¹⁷ and the language ones (arts. 13 and 14).¹⁸ The deadline for the

¹⁷ Many of the displaced persons and IDPs in Montenegro, however, have registered their 'temporary stay' (*boravište*). In such cases, the Law on Foreigners applies.

¹⁸ The rationale for such a provision is likely to be the fact that most of the displaced persons and IDPs that settled on Montenegrin soil come from one of the successor states of the former Yugoslavia,

submission of applications was initially set to one year in regular cases and to three years in cases when the person has remained stateless. Recently, article 41 has been changed in two respects. First, the deadline for the submission of the application for admission into Montenegrin citizenship for stateless persons (subject to further provisions of Articles 8 and 41) has been extended from three to five years from the date of the enactment of the Citizenship Act. Second, article 41a, makes explicit reference to the new provisions of Article 8, and extends the deadline for the persons covered by the scope of article 41 until 05 May 2011.

In effect, article 8 has slightly been liberalised by the Law on Amendments and Addenda to the Montenegrin Citizenship Act. The adopted changes stipulate that the release from citizenship of another state (as per Article 8, paragraph 1, point 2) is no longer required if the person is stateless; if the person submits the proof that by entry into Montenegrin citizenship they will lose their citizenship of origin by force of law; and if the person was unable to obtain release from their citizenship of origin because they did not complete the obligatory military service, provided that they signed the statement that in the case of obtaining the Montenegrin citizenship the person would renounce the citizenship of their state of origin.

According to the Citizenship Act, if criminal proceedings have been initiated against the petitioner, the request for admittance into Montenegrin citizenship will be postponed until the verdict has been reached. In addition, all people requesting Montenegrin citizenship are required to relinquish their original citizenship once naturalised. In case the person has submitted their application for naturalisation in Montenegro, and have not yet relinquished their other citizenship, they are not granted Montenegrin citizenship even though they may fulfil all other conditions. Rather, the Montenegrin authorities will issue a written assurance (with two-year validity) that they will receive Montenegrin citizenship provided that they relinquish their other citizenship. Should they fail to do so, their petition for admission into Montenegrin citizenship will be suspended (art. 9).

Notwithstanding the conditions presented above, one of the articles of the Montenegrin Citizenship Act related to naturalisation has recently caused much turmoil in the public sphere. Pursuant to article 12, naturalisation may be granted to any person over the age of 18, should the state decide that this will be for the benefit of the state for scientific, economic, cultural, economic, sports, national or other reasons. The 2010 amendments to the Citizenship Act grant the competence to the President of Montenegro, the Prime Minister, or the Speaker of Parliament to propose candidates for naturalisation. The decision over whether the benefit to the state suffices to grant the person in question Montenegrin citizenship is a discretionary power given to the Ministry of Interior.

which gives them good command of the Montenegrin language (one of the offset languages of the 'Serbo-Croatian'). Stateless persons by default fulfil criterion 2 from art. 8 of the Montenegrin Citizenship Act.

In June 2010, the government of Montenegro adopted the Decision on the Criteria for Determining Scientific, Business, Economic, Cultural and Sports Interest of Montenegro for the Acquisition of Montenegrin Citizenship by Admission. In the Montenegrin context, the most interesting provision of this decision is the one related to business and economic interest, which establishes the category of 'citizenship-by-investment'. Montenegrin 'citizenship-by-investment' is available to those individuals who have invested in Montenegro's economy, or donated funds to Montenegro. Pursuant to the decision, such persons should be 'established experts or investors of undoubted international reputation' (art.3). On the basis of this article, the government has adopted the Manual on the Implementation of Criteria for the Determination of Business and Economic Interest of Montenegro for the Acquisition of Montenegrin Citizenship by Admission. Thus, individuals who invest 500,000 euros in Montenegro will qualify for this 'citizenship-by-investment'. The procedure also implies the control over such requests for naturalisation by an independent consultancy agency and an opinion of the Ministry of Finance, while the request will be processed by the Ministry of Interior.

This decision has caused much turmoil in the Montenegrin media (*Vijesti*, 10-14 August 2010), and has sparked considerable criticism by the Montenegrin opposition and some NGOs. The likely reason for such a public reaction is related to a recent case of naturalisation on grounds of article 12. In the first half of 2009, the Montenegrin press revealed that the former Prime Minister of Thailand who has been convicted of corruption – Taksin Shinawatra – received a Montenegrin passport (and thus Montenegrin citizenship). A number of domestic NGOs attempted to acquire information from the Ministry of Interior about the grounds on which Montenegrin citizenship granted to Shinawatra, and claimed that granting such a person Montenegrin citizenship was unlawful (MANS 2009; Jovićević 2009). Despite the many attempts by civil society organisations, the Ministry of Interior refused to reveal the details of this issue, referring to the Law on the Protection of Personal Data. Eventually, the Montenegrin authorities revealed that Shinawatra has been naturalised on grounds of his multi-million investment in Montenegrin tourism. The Spokeswoman of the Montenegrin government – Olivera Đukanović – said that this type of citizenship should cause no concern among the population in Montenegro, as it is a common practice in a number of Western democratic countries, including Austria, Belgium, Canada and the United States of America (Vlada Crne Gore 2010). She also noted that stringent rules will be applied in determining the outcome of all applications.

The Montenegrin decision has, however, sparked different reactions internationally. While the European Commission stated that it will comment upon these pieces of Montenegrin legislation in the forthcoming Progress Report, one member of the governing coalition in Germany – Christian Socialist Union (CSU) – has criticised the government's decision and announced that it might request the reinstatement of visas for the citizens of Montenegro. In contrast to the announcements of the Montenegrin government that the funds invested must be

‘undisputed’ and the origins thereof ‘proven’, CSU implies that this decision might affect the previous progress Montenegro had made in the area of border management and immigration control (*Vijesti* 12/08/2010). They also emphasise that the link between the citizen and the state, envisaged in the concept of citizenship may not be established solely on grounds of foreign investment. By contrast, the Canadian Ambassador in Belgrade (also representing Canada in Montenegro and Macedonia) John Morrison commended the Montenegrin model of ‘citizenship-by-investment’, and compared it to the Canadian one (B92, 16/08/2010).¹⁹ Morrison emphasised the significance of foreign direct investment for the development of the country and noted that he expected that the issue of the origins of investment will be handled by independent expert agencies.

2.1.4 International agreements

The final mode of acquisition of Montenegrin citizenship is by international agreements. This provision is related to international treaties that regulate the territorial changes, and as such has not been often used in Montenegro.

2.2. Modes of loss of Montenegrin citizenship

Pursuant to Article 19 of the Citizenship Act, there are three modes of loss of Montenegrin citizenship: 1) by request of the Montenegrin citizen; 2) by deprivation; or 3) by international agreements. However, if a person requested release from Montenegrin citizenship in order to acquire the citizenship of another state, they are entitled to re-acquire their Montenegrin citizenship provided that they legally and continuously reside in Montenegro for at least one year before their plea (art. 26).

2.2.1 Request

Any person over the age of eighteen can request release from Montenegrin citizenship, provided they: 1) hold foreign citizenship or have the proof that they will be granted foreign citizenship; 2) reside in another state (art. 20). Where the person who had requested release from Montenegrin citizenship has not been granted foreign citizenship within two years from the date of submission of their request, their petition for release will be suspended (art. 21). Similarly, if the person has already been granted release from Montenegrin citizenship, but failed to acquire foreign citizenship within one year from the date of their release from the Montenegrin one, they can request their release to be invalidated (art. 23). The request for the annulment of the release should be lodged within three months from

¹⁹ Unlike Montenegro, Canada grants permanent residence to investors who invest in Canada for five years. Following three years of residence, investors may qualify for Canadian citizenship.

the expiry of one year from the date of its issue, or at any point if the person remained stateless (art. 23).

A child, or an adopted child, can be released from Montenegrin citizenship (provided that he or she does not remain stateless), when: 1) both parents are released from Montenegrin citizenship; 2) one parent is released from Montenegrin citizenship, and the other: a) consents to the child's release; b) is a citizen of a foreign state; c) is of unknown citizenship or stateless; or 4) is unknown (art. 22). The Law also stipulates that in the case there is no consent between the parents over the release of the child from Montenegrin citizenship, the social welfare state authorities will deal with the case.

2.2.2 Deprivation

Deprivation of citizenship occurs when the state withdraws a person's citizenship. Montenegrin Citizenship Act stipulates that deprivation occurs in several cases, when the person holds another citizenship in addition to the Montenegrin one. The reference to the possession of another citizenship is aimed at preventing statelessness. These cases include: 1) the voluntary acquisition of a foreign citizenship, provided that no dual citizenship agreement has been made; 2) the cases when the decree on naturalisation has been made on the basis of false statements, provided that the person would not remain stateless if their Montenegrin citizenship is taken away; 3) the cases when a person is found guilty of crimes against humanity under international law; 4) when a person has been involved in terrorist activities or activities deliberately endangering the security of Montenegro; 5) the cases of members of foreign military services; or 6) the cases of people whose behaviour is deemed harmful to the interests of Montenegro (art. 24).

A closer look at the cases in which a person may be deprived of Montenegrin citizenship reveals that the determination of 'behaviour' harmful to the state is a discretionary power of the state authorities. Consequently, this legal provision remains rather vague and leaves a large margin of interpretation as to what constitutes 'behaviour harmful to the interests of Montenegro' (art. 24).

2.2.3 International agreements

Paralleling the provision on the acquisition of Montenegrin citizenship by international treaties and agreements, art. 25 stipulates that the Montenegrin citizenship may be terminated on grounds of the treaties and agreements concluded by Montenegro.

2.3 Dual Citizenship

The question of dual citizenship in Montenegro is a rather politically sensitive one, largely due to the state of political relations with Serbia.²⁰ As in some of the other successor states of the former Yugoslavia (Ragazzi and Štiks 2009), provisions of the Citizenship Act reflect the ambiguity over whether dual citizenship is possible in Montenegro or not. Art. 2 of the Citizenship Act notes that 'a Montenegrin citizen holding at the same time also the citizenship of a foreign country' will be considered a Montenegrin citizen when dealing with Montenegrin authorities. Such a provision implies that it is possible to hold multiple citizenships, including the Montenegrin one. However, the present conditions for naturalisation conflict with this provision, in that a foreign citizen is requested to obtain release from his/her other citizenship in order to obtain the Montenegrin one (art. 8, para. 2).

The only dual citizenship agreement that Montenegro has concluded is with Macedonia. This agreement is of a rather peculiar nature, as it reiterates the provisions stipulated in the Law on the implementation of Constitution of Montenegro. However, the agreement does not regulate any matters related to the acquisition or loss of citizenship (Ministry of Interior 02-3226/3, 2009).

If the laws were consistently applied, the only people in possession of dual citizenship in Montenegro would be the ones who possessed citizenship of Montenegro and another country before 3 June 2006 (Law on the Implementation of Constitution of Montenegro 2007, art. 12). An exception to this norm concerns those citizens naturalised pursuant to arts. 10, 11, and 12 of the Citizenship Act, who are not required to submit the release from their original citizenship when being admitted into Montenegrin citizenship. However, practice has shown that it is possible for the citizens of Montenegro residing outside the Balkans (e.g. EU, United States, Canada, etc.) to obtain dual citizenship on the grounds of art. 8 alone. In some cases, citizens from the other republics of the former Yugoslavia were able to do so as well. Still, as citizenship issues are rather complex in the region, and checking is facilitated by the similarities of language, it is generally more difficult to obtain dual citizenship.

2.4 Institutional arrangements: acquisition of Montenegrin citizenship in practice

The Ministry of Interior and Public Administration is the authority that has the competence and the discretionary power over citizenship matters. Any application for the acquisition or the loss of Montenegrin citizenship is submitted to the Ministry, on specially designed application forms. Art. 28 of the Citizenship Act stipulates that when the applicant resides outside Montenegro, the application can be submitted through a diplomatic or a consular office. Pursuant to the same article, people under the age of eighteen need to have their application submitted by their legal guardians.

²⁰ See details in the previous sections.

Following the submission of their request, persons may either obtain Montenegrin citizenship unconditionally, or they may be granted a decree stating that they will be naturalised once they fulfil certain criteria from article 8 of the Citizenship Act. Should a person fail to fulfil the criteria stipulated in the decree his or her petition will be suspended (art. 29).

A peculiar fact is related to the conditions for the acquisition of Montenegrin citizenship, and as such is related to the ongoing process of nationalisation in Montenegro. Art. 8 of the Citizenship Act requires the petitioners for Montenegrin citizenship to possess a basic knowledge of the Montenegrin language. To that end, in August 2008, the government of Montenegro has adopted a decision establishing the Examination Centre for Montenegrin language. The first tests for candidates were conducted shortly thereafter. The problematic aspect of this decision is the fact that the Montenegrin language only became standardised through grammatical and orthographic norms in July 2009;²¹ that is, almost one year after language testing was initiated.

Once all the conditions for the admission to Montenegrin citizenship, the person signs a solemn statement, in front of the representative of the office of the Ministry of Interior (Decision on the Solemn Statement 2009, art. 3). Thus, the acquisition of Montenegrin citizenship is valid from the date on the solemn statement. By contrast, in cases of the loss of Montenegrin citizenship, the date on which the decree has been issued marks the when the person in question ceases to be a Montenegrin citizen.

The decision of the Ministry of Interior is final. Complaints on procedural matters can be made to the Administrative Court, which – if the request is resolved in favour of the plaintiff – may annul the Ministry's decision. So far, no significant case law has been developed.

2.5 Statistical Data

At the time of the existence of the former Yugoslavia, the systems of keeping the Citizenship Registers were different in different periods. That is, most of the records were kept by the local self-government authorities, while the requests for naturalisation and dismissal were handled by the Ministries of Interior. The fact that the procedures were different, and that all data were stored in differently conceptualised books, made the production of official citizenship statistics rather difficult, because everything had to be counted by hand. This said, the electronic version of the Central Citizenship Register of Montenegro was supposed to become operative as of 1 January 2010, while the data presented below have been received through a formal request to the Ministry (02-3226/3, 2009).²² As a result of the

²¹ Unlike the remaining former Yugoslav successor states, Montenegro has introduced two new letters in its alphabet (one of the means of differentiation from the Serbian language).

²² The data refer to the period after the adoption of the 2008 Montenegrin Citizenship Act.

technical difficulties and the manual input of data, the electronic Central Citizenship Register of Montenegro has been delayed by several months.

The Ministry of Interior was unable on request by the author to provide the information on the number of persons who have acquired Montenegrin citizenship by origin or by birth on the territory of Montenegro. The reason for that is that in these cases citizenship is acquired at the time of birth *de jure*, without the issuing of a separate decree. In these cases, the request for the inscription in the Register of Births simultaneously represents the request for the inscription into the Citizenship Register. Thus, in December 2009, because there was no electronic register in Montenegro, the Ministry of Interior was unable to provide the data related to the acquisition of citizenship by origin and birth.

However, the Ministry did make available the data related to naturalisation and the loss of citizenship. From 5 May 2008 until 8 December 2009, a total of 4,121 people were admitted to Montenegrin citizenship. During the same period, 251 persons were granted release from Montenegrin citizenship, while 12 persons lost their Montenegrin citizenship *ex lege* (Ministry of Interior 02-3226/3, 2009). Finally, there are no citizens who have either acquired or lost citizenship by international agreements in Montenegro, since Montenegro has not signed dual citizenship agreements (except with Macedonia).²³

In February 2010, replying to the parliamentary questions of the SNP parliamentarian Mrs. Snežana Jonica, the Ministry of Interior provided the data on naturalisation in each of the Montenegrin municipalities from 05 May 2008 to 18 December 2009, presented in the table below.

Table 1. Naturalisation in Montenegro 2008-2009

Municipality	No. of requests	No. of naturalisations	Proceedings discontinued	No. of requests rejected
Ulcinj	455	81	/	11
Bar	1,668	372	2	20
Budva	1,214	312	1	32
Tivat	835	141	/	19
Kotor	806	313	/	18
Herceg Novi	2,415	428	2	43
Cetinje	216	62	/	/
Podgorica	3,535	1,259	13	86
Danilovgrad	205	65	2	7
Nikšić	793	338	1	42
Plav	97	19	/	1
Šavnik	4	2	/	/
Žabljak	22	5	/	/

²³ See Section 3.4.

Plužine	14	2	/	1
Rožaje	555	220	/	2
Berane	360	111	1	5
Pljevlja	533	231	1	5
Andrijevica	29	2	/	/
Kolašin	70	21	4	1
Mojkovac	66	28	/	2
Bijelo Polje	769	334	/	19
Total	14,391	4,346	27	314

More recently, and following another question from the same parliamentarian, the Ministry of Interior provided more up-to-date records on the numbers of naturalised citizens in Montenegro (SNP 2010). From the date of implementation of the current Citizenship Act up to 11 June 2010, the Ministry of Interior had received 17,896 requests for naturalisation. On grounds of those requests, 6,008 people were admitted into the Montenegrin citizenship; naturalisation proceedings were discontinued in 38 cases, while 369 requests for naturalisation were rejected. In the same period, the Ministry of Interior has issued 2,809 guarantees that individuals will be admitted into Montenegrin citizenship after they obtained release from their citizenship of origin. According to the reply of the Ministry, the proceedings in the remaining cases are ongoing. At the same time, 83 persons were naturalised in accordance with Article 12 of the Montenegrin citizenship act.

3. Current political debates and reform plans

The Law on Amendments and Addenda to the 2008 Citizenship Act has been passed on 09 July 2010. During the Parliamentary debate, it has been emphasised by the Ministry of European Integration and the parliamentary Committee on international affairs and European integration that, while the changes to the Citizenship Act were not formally required in the process of European integration, they are in line with Recommendation No. R(99) 18 of the Committee of Ministers to Member States on the avoidance and reduction on statelessness, International Covenant on Civil and Political Rights, Convention on the Rights of the Child, Convention on the Elimination of All Forms of Discrimination Against Women, Convention relating to the Status of Stateless Persons and the Convention Relating to the Status of Refugees. The Law on Amendments and Addenda to the 2008 Citizenship Act contains 13 articles, by virtue of which it makes several significant changes to the current citizenship regime in Montenegro, while retaining its restrictive nature. Pursuant to Article 45a of the consolidated version of the Citizenship Act, the changes will have immediate effect.

Indeed, the changes to the 2008 Montenegrin Citizenship Act largely reflect the political dynamic after Montenegro became an independent state. The post-

referendum environment in Montenegro, within which the 2008 Citizenship Act has been adopted, was characterised by the certainty of Montenegrin statehood and the persistence of the division over Montenegrin nationhood. The aim of the DPS-led government, which based its policies on the rhetoric of European integration and multiculturalism, was to attempt to close the division over nationhood with the concept of the 'civic' state. That is, the Citizenship Act adopted has been defined as the legal relationship between the state and the individual, and – in contrast to the other successor states – it has explicitly been noted that the notion of citizenship implied no ethnic belonging.

Having said that, the provisions of the Citizenship Act related to the residence criteria for admission and dual citizenship generated a separate political debate. The emergence of this debate has been caused by the inextricability of these provisions from other issues, such as displaced persons and IDPs, and – certainly – voting arithmetic. Since the amendments and addenda to the 2008 Citizenship Act of July 2010, there have been no pending draft laws directly related to the amendments and addenda to the Citizenship Act in the Parliament of Montenegro. However, given the increased number of requests for the acquisition of Montenegrin citizenship in the past year, the Ministry of Interior is considering amending the existing Law in order to facilitate the procedures for the acquisition of citizenship for certain categories of people. These procedures should be further simplified by the entry into force on 01 August 2010 of the Law on Ratification of the Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession that would become *lex specialis* for cases of statelessness. This law, along with the Law on Ratification of the European Convention on Nationality was adopted by the Parliament of Montenegro, and the country has ratified both Conventions. The European Convention on Nationality will enter into force in Montenegro on 01 October 2010.

The ratification procedure of these conventions has been rather smooth, since political parties in Montenegro (whose rhetoric is largely the one of 'catching up with Europe') were willing to accept the recommendations of the Council of Europe related to the adoption of international documents. However, the ratification of the European Convention on Nationality still reveals the country's restrictive approach to dual citizenship. In fact, Montenegro has placed a reservation on article 16 of the Convention, dealing with dual citizenship. This reservation clause has its roots in the current Citizenship Act, which allows dual citizenship only in the cases described in section 2.3.

In addition, on 22 October 2009, the Parliament of Montenegro enacted the amendments and addenda to the Foreigners Act, which is indirectly related to the Citizenship Act. In fact, the addenda to the Foreigners Act included the provisions related to displaced persons and IDPs (art. 105a). Pursuant to the new provisions, displaced persons from the other successor states of the former Yugoslavia were entitled to claim permanent residence in Montenegro, if they had been registered as displaced persons at the time of the adoption of the original Foreigners Act on 31 December 2006. Internally displaced persons (from Kosovo) may obtain permanent

residence in Montenegro if they registered with an administrative authority by 14 November 2009 (art. 105a). The subsequent provisions in the amendments and addenda to the Foreigners Act require all the displaced persons and IDPs to claim permanent residence in Montenegro within two years from their date of enactment, thus losing their status of displaced persons and IDPs. This procedure would grant the right of permanent residence and thus the prospect of acquiring Montenegrin citizenship, and a range of other civil and political rights in the future, to some of the 24,019 displaced persons and IDPs (UNHCR 2010). Should they fail to register, they will be deemed to reside illegally in Montenegro, thus losing those entitlements to healthcare and education that they have as displaced persons and IDPs. The main problem generated by this provision will involve the status of different Roma groups (Roma, Ashkali and Egyptian) who fled to Montenegro during the 1999 crisis in Kosovo. According to UNHCR (2010), there are 1,500 Roma, Ashkali and Egyptian people in Montenegro, who are at risk of statelessness, because they often do not register the birth of their children. Thus, it is likely that the implementation of this law will generate a vigorous public debate in the future. On the one hand side, the Montenegrin policymakers have obviously been pressured by the European Union accession requirements to tackle the questions of displaced persons and IDPs. On the other hand, it is likely that the Law will face delays in implementation, due to the fact that it might disrupt the electoral dynamics, which is the least preferred option by the ruling DPS. In effect, should the displaced persons from Bosnia and Herzegovina and Croatia obtain Montenegrin citizenship, and thus voting rights, they will be unlikely to vote for the DPS due to their affiliation with Serbia.

This also affects the debate over dual citizenship with other successor states of the former Yugoslavia. In fact, art. 18 (para. 2) of the Citizenship Act enshrines the possibility of establishing the dual citizenship regime through international agreements. So far, an agreement has only been reached with Macedonia, but it merely reiterates the provisions of the Law on the Implementation of the Constitution of Montenegro. As such, it offers no direct provisions related to the acquisition and loss of citizenship in the two states. Negotiations for the establishment of dual citizenship have been ongoing ever since the adoption of the Citizenship Act with the other former Yugoslav republics. The ones with the neighbouring Croatia are ongoing. Negotiations with Bosnia and Herzegovina failed in March 2009, when the president of the presidency of Bosnia and Herzegovina – Haris Silajdžić – deemed that the dual citizenship with Montenegro would be discriminatory. According to Silajdžić, citizens of Bosnia and Herzegovina who did not possess citizenship of countries that allowed dual citizenship would have to renounce their Bosnian and Herzegovinian citizenship, which makes the dual citizenship arrangements unbalanced (*FENA*, 19 March 2009).

However, a more substantial political problem has emerged in the course of negotiations with Serbia. After the referendum on independence, and the decision of the government of Montenegro to recognise the independence of Kosovo in October 2008, the relationship between the two countries remained strained. Late in 2009, the

Serbian press announced that the negotiations for dual citizenship between the governments of Serbia and Montenegro reached a dead end. The headlines in the Serbian press were followed by quite different information in the Montenegrin media, who claimed that the negotiations were paused and not terminated. While the conundrum over the continuation of the negotiations is ongoing, the stances of the two governments seem as far away one from another as they were when the negotiations started, because the Serbian approach to dual citizenship is much more liberal than the Montenegrin one. The reason for the Montenegrin restrictive approach to dual citizenship is the tendency of the governing coalition to preserve the voting arithmetic in Montenegro. This arithmetic would be seriously impaired by the addition of new voters to the Electoral Register,²⁴ thus challenging the DPS-led government and - to a certain extent - Montenegrin statehood. The proposal for dual citizenship in Serbia is supported by the parties that belonged to the former unionist/pro-Serbian bloc, many of which present themselves as the guardians of Serbian interests in Montenegro.

4 Conclusions

The Montenegrin case does not completely fit the Balkans paradigm of ethnic citizenship. However, neither is it purely 'civic', as the rhetoric of the Montenegrin officials would imply. If the two most recent Citizenship Acts are analysed, what emerges from this is that they were indeed a tool of political engineering (similar to other successor states of the former Yugoslavia). Still, the Montenegrin case is somewhat peculiar, as the two acts were not aimed at providing ethnic homogenisation. The first reason for this is that Montenegro in itself is a multicultural society in which none of its ethnic groups forms a majority: 43.16 per cent are Montenegrins; 31.99 per cent are Serbs; 7.77 per cent are Bosniaks; 5.03 per cent are Albanians; 3.97 per cent are Muslims; and 1.10 per cent are Croats (Monstat 2003). The second reason is that the rationale for the adoption of the two acts, and the context in which they were enacted were different. While the 1999 Citizenship Act determined the citizenship issues in a republic of the FRY, thus being the second tier of citizenship legislation, the 2008 Citizenship Act is a piece of legislation of a sovereign state. In addition, the 1999 Citizenship Act was adopted as one of the policies of the Montenegrin government aimed at detaching from the FRY institutions and countering Milošević, which explains why this document collided with the 1996 Yugoslav Citizenship Act. In itself, this act was neither aimed at framing the quest for Montenegrin independent statehood (as this gained momentum only after the fall of Milošević in 2000), nor at homogenising Montenegrin nationhood. However, the 1999 Citizenship Act reinforced

²⁴ The Electoral Law links voting rights with permanent residence, which means that only the current citizens of Serbia with permanent residence in Montenegro would be added to the Electoral Register, in case they would obtain Montenegrin citizenship. The exact statistics on such people are unavailable at present.

Montenegrin autonomy within the Yugoslav federation, since it openly collided with the FRY law (designed for a unitary country or a federation in process of homogenisation and centralisation) and reversed its primacy (republican citizenship became primary instead of the federal one).

By contrast, the 2008 Montenegrin Citizenship Act was a means of consolidating Montenegrin statehood through the separation of the link of individuals with the community of law (state) and the community of sentiment (*ethnié*). The most recent Montenegrin Citizenship Act in itself has generated much public debate due to the restrictions it posed in terms of acquisition of Montenegrin citizenship and the regulation of dual citizenship. The strict residence criterion of 10 years of continuous legal residence on the Montenegrin territory has been a barrier to almost 25,000 displaced persons and IDPs who settled on Montenegrin soil during the wars of Yugoslav disintegration acquiring Montenegrin citizenship. At the same time, a provision on the establishment of dual citizenship through international agreements on grounds of reciprocity is enshrined in the Montenegrin Citizenship Act. However, due to the political strains, the individual dual citizenship agreements between Montenegro and the other successor states of the former Yugoslavia (apart from Macedonia) failed to materialise. A more important reason for the deadlock in the negotiations over dual citizenship is related to the non-consolidated nationhood and voting arithmetic, particularly in the case of dual citizenship *vis-à-vis* Serbia. Serbian citizens who would be entitled to Montenegrin citizenship, and who would reside in Montenegro for two consecutive years prior to the elections, would increase the number of voters. Since the newly admitted citizens would be most likely to associate themselves politically with the pro-Serb parties in Montenegro, it is unlikely that Montenegro will adopt a more liberal approach to the negotiations for dual citizenship with Serbia.

On 28 April 2010, Montenegro has ratified the Council of Europe's Convention on the Avoidance of Statelessness in Relation to State Succession, with effect from 1 August 2010. Additionally, on 22 June 2010, Montenegro has ratified the European Convention on Nationality (placing a reservation on Article 16, dealing with dual citizenship), which will enter into force on 1 October 2010. In addition, it is expected that the political conditionality of the EU will have a significant impact on the facilitation of procedures for the acquisition of citizenship for certain categories of applicants. This, in turn, would reduce statelessness and regulate the status of displaced persons and IDPs. At the same time, it will be interesting to follow and observe to what extent the dynamics induced by political conditionality will be reflected in the willingness of the Montenegrin policymakers to accept the rules of a new quest – the quest for Europeanisation.

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